

ESTTA Tracking number: **ESTTA359607**

Filing date: **07/23/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	LF, LLC
Granted to Date of previous extension	07/24/2010
Address	2601 Annand DriveSuite 17 Wilmington, DE 19808 UNITED STATES
Correspondence information	LF, LLC 2601 Annand DriveSuite 17 Wilmington, DE 19808 UNITED STATES markwilson@mvalaw.com, katecole@mvalaw.com, jessicamcclure@mvalaw.com Phone:703-331-1177

Applicant Information

Application No	77894143	Publication date	05/25/2010
Opposition Filing Date	07/23/2010	Opposition Period Ends	07/24/2010
Applicant	Van Nostrand, Willard Randolph, III 3737 E. Calle Cortez Tucson, AZ 85716 UNITED STATES		

Goods/Services Affected by Opposition

Class 031. First Use: 2009/06/17 First Use In Commerce: 2009/06/17

All goods and services in the class are opposed, namely: Herb seeds for planting; Organic gardening kit for indoor and outdoor planting composed primarily of organic seeds for fruits, vegetables and flowers and also including peat pots and peat pellets; Plant seeds; Seeds and bulbs; Seeds for flowers; Seeds for fruit and vegetables; Seeds for horticultural purposes; Tree growing kits composed primarily of seeds and also including peat pots and peat pellets

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	78808928	Application Date	02/07/2006
Registration Date	NONE	Foreign Priority	NONE

		Date	
Word Mark	LET'S BUILD SOMETHING TOGETHER		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 2006/03/00 First Use In Commerce: 2006/03/00 Retail store services featuring a variety of appliances, building materials, plumbing supplies, roofing materials, home furnishings and home improvement supplies; business consultation services for others in the fields of building materials, plumbing supplies, roofing materials, and home furnishings; retail floral store services; and bridal gift registry services</p> <p>Class 036. First use: First Use: 2006/03/00 First Use In Commerce: 2006/03/00 Providing extended warranties on appliances and home improvement products; credit card services; and charitable fund raising</p> <p>Class 037. First use: First Use: 2006/03/00 First Use In Commerce: 2006/03/00 INSTALLATION, REPAIR, AND RENOVATION SERVICES FOR APPLIANCES, HOME FURNISHINGS, AND HOME IMPROVEMENT ITEMS; RENTAL OF CONSTRUCTION EQUIPMENT AND TOOLS; PAINT MIXING; AND COMPUTER PAINT MIXING SERVICES</p> <p>Class 040. First use: First Use: 2006/03/00 First Use In Commerce: 2006/03/00 Providing custom pipe cutting and pipe threading services</p> <p>Class 041. First use: First Use: 2006/03/00 First Use In Commerce: 2006/03/00 Educational services, namely, conducting courses and workshops in the fields of home safety and home protection procedures and products, and the dissemination of printed course materials related thereto</p> <p>Class 042. First use: First Use: 2006/03/00 First Use In Commerce: 2006/03/00 Design consultation and design for others in the fields of building materials, plumbing supplies, roofing materials, and home furnishings</p>		

U.S. Application No.	77291533	Application Date	09/28/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	LET'S BUILD SOMETHING TOGETHER		

Design Mark	<p>LET'S BUILD SOMETHING TOGETHER</p>
Description of Mark	NONE
Goods/Services	<p>Class 009. First use: Downloadable films and TV programs provided via video-on-demand and prerecorded videotapes promoting ideas for home improvement projects, home and garden and woodworking</p> <p>Class 016. First use: Printed materials, namely, brochures, pamphlets, newsletters, magazines, books, posters promoting ideas for home improvement projects, home and garden and woodworking projects</p> <p>Class 035. First use: Advice and information about customer services and product management and prices on internet sites in connection with purchases made over the internet related to home improvement, garden and woodworking projects; preparation of custom or non-custom advertising for businesses for dissemination via the web, CD or DVD for optional upload or download to a computer</p> <p>Class 038. First use: Broadcasting services and provision of telecommunication access to films and TV programs provided via a video-on-demand service featuring ideas for home improvement, home and garden and woodworking projects; radio broadcasting information, consultation</p> <p>Class 041. First use: Educational services, namely, workshops, how to clinics promoting ideas for home improvement projects, home and garden and woodworking; provision of non-downloadable films and TV programs via a video-on-demand service</p>

U.S. Application No.	77058776	Application Date	12/07/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	LOWE'S LET'S BUILD SOMETHING TOGETHER		
Design Mark	<p>LOWE'S LET'S BUILD SOMETHING TOGETHER</p>		

Description of Mark	NONE
Goods/Services	<p>Class 035. First use: RETAIL STORE SERVICES FEATURING A VARIETY OF APPLIANCES, BUILDING MATERIALS, PLUMBING SUPPLIES, ROOFING MATERIALS, HOME FURNISHINGS AND HOME IMPROVEMENT SUPPLIES; RETAIL FLORAL STORE SERVICES; AND BRIDAL GIFT REGISTRY SERVICES</p> <p>Class 036. First use: PROVIDING EXTENDED WARRANTIES ON APPLIANCES AND HOME IMPROVEMENT PRODUCTS; CREDIT CARD SERVICES; AND CHARITABLE FUND RAISING</p> <p>Class 037. First use: Installation, repair, and renovation services for appliances, home furnishings, and home improvement items; rental of construction equipment and tools; paint mixing; and computer paint mixing services; consultation regarding building materials, plumbing supplies and roofing materials</p> <p>Class 040. First use: PROVIDING CUSTOM PIPE CUTTING AND PIPE THREADING SERVICES</p> <p>Class 041. First use: EDUCATIONAL SERVICES, NAMELY, CONDUCTING COURSES AND WORKSHOPS IN THE FIELDS OF HOME SAFETY AND HOME PROTECTION PROCEDURES AND PRODUCTS, AND THE DISSEMINATION OF PRINTED COURSE MATERIALS RELATED THERETO</p> <p>Class 042. First use: Design consultation and design for others in the fields of building materials, plumbing supplies, roofing materials, and home furnishings; and interior design consultation regarding home furnishings</p>

Attachments	<p>78808928#TMSN.jpeg (1 page)(bytes)</p> <p>77291533#TMSN.jpeg (1 page)(bytes)</p> <p>77058776#TMSN.jpeg (1 page)(bytes)</p> <p>7_23_10 Notice of Opposition.pdf (9 pages)(298679 bytes)</p>
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/J. Mark Wilson/
Name	LF, LLC
Date	07/23/2010

In re application of: Willard Randolph Van Nostrand, III
 Serial No.: 77/894,143
 Filed: December 15, 2009
 Mark: “LET’S GROW SOMETHING TOGETHER”
 Published: May 25, 2010

LF, LLC,)
)
Opposer)
)
v.) Opposition No. _____
)
Willard Randolph Van Nostrand, III,)
)
Applicant)

LF, LLC, a Delaware limited liability company having a mailing address at 2601 Annand Drive, Suite 17, Wilmington, Delaware 19808 (hereinafter, “Opposer”), believes that it will be damaged by the registration in International Class 031 of the mark shown in Application Serial No. 77/894,143, filed December 15, 2009, by Willard Randolph Van Nostrand, III, an individual having a mailing address at 3737 E. Calle Cortez, Tucson, Arizona 85716 (“Applicant”), and hereby opposes the registration of said mark in International Class 031 pursuant to 15 U.S.C. § 1063 and 37 C.F.R. §2.101 *et seq.* At this time, Applicant does not appear to be represented by counsel in this matter.

1. Opposer is the owner of the following U.S. trademark applications incorporating the terms LET’S BUILD SOMETHING TOGETHER (collectively, the “Marks”):

(a) Opposer owns U.S. Application No. 78/808,928 for the mark LET'S BUILD SOMETHING TOGETHER (filed February 7, 2006; allowed June 18, 2010) in connection with the following services in International Class 035: "Retail store services featuring a variety of appliances, building materials, plumbing supplies, roofing materials, home furnishings and home improvement supplies; business consultation services for others in the fields of building materials, plumbing supplies, roofing materials, and home furnishings; retail floral store services; and bridal gift registry services;" International Class 036: "Providing extended warranties on appliances and home improvement products; credit card services; and charitable fund raising;" International Class 037: "Installation, repair, and renovation services for appliances, home furnishings, and home improvement items; rental of construction equipment and tools; paint mixing; and computer paint mixing services;" International Class 040: "Providing custom pipe cutting and pipe threading services;" International Class 041: "Educational services, namely, conducting courses and workshops in the fields of home safety and home protection procedures and products, and the dissemination of printed course materials related thereto;" and International Class 042: "Design consultation and design for others in the fields of building materials, plumbing supplies, roofing materials, and home furnishings" (date of first use, March 2006; date of first use in commerce, March 2006).

(b) Opposer owns U.S. Application No. 77/291,533 for the mark LET'S BUILD SOMETHING TOGETHER (filed September 28, 2007) in connection with the following goods in International Class 009: "Downloadable films and TV

programs provided via video-on-demand and prerecorded videotapes promoting ideas for home improvement projects, home and garden and woodworking;” International Class 016: “Printed materials, namely, brochures, pamphlets, newsletters, magazines, books, posters promoting ideas for home improvement projects, home and garden and woodworking projects;” and the following services in International Class 035: “Advice and information about customer services and product management and prices on internet sites in connection with purchases made over the internet related to home improvement, garden and woodworking projects; preparation of custom or non-custom advertising for businesses for dissemination via the web, CD or DVD for optional upload or download to a computer;” International Class 038: “Broadcasting services and provision of telecommunication access to films and TV programs provided via a video-on-demand service featuring ideas for home improvement, home and garden and woodworking projects; radio broadcasting information, consultation;” and International Class 041: “Educational services, namely, workshops, how to clinics promoting ideas for home improvement projects, home and garden and woodworking; provision of non-downloadable films and TV programs via a video-on-demand service.”

(c) Opposer owns U.S. Application No. 77/058,776 for the mark LOWE’S LET’S BUILD SOMETHING TOGETHER (filed December 7, 2006) in connection with the following services in International Class 035: “Retail store services featuring a variety of appliances, building materials, plumbing supplies, roofing materials, home furnishings and home improvement supplies; retail floral

store services; and bridal gift registry services;" International Class 036: "Providing extended warranties on appliances and home improvement products; credit card services; and charitable fund raising;" and the following services in International Class 037: "Installation, repair, and renovation services for appliances, home furnishings, and home improvement items; rental of construction equipment and tools; paint mixing; and computer paint mixing services; consultation regarding building materials, plumbing supplies and roofing materials;" International Class 040: "Providing custom pipe cutting and pipe threading services;" International Class 041: "Educational services, namely, conducting courses and workshops in the fields of home safety and home protection procedures and products, and the dissemination of printed course materials related thereto;" and International Class 042: "Design consultation and design for others in the fields of building materials, plumbing supplies, roofing materials, and home furnishings; and interior design consultation regarding home furnishings."

2. Opposer's licensees have expended millions of dollars on advertising materials bearing Opposer's Marks, including television, radio, newspaper, and magazine advertisements as well as brochures, tab advertising, and in-store signage. Opposer's Marks are also featured throughout the country in conjunction with Opposer's licensees' goods and/or services in Lowe's Home Improvement Warehouse stores and on the website located at www.lowes.com.

3. Opposer's Marks are significant assets to Opposer and its licensees as the total revenue generated by sales of goods and services bearing Opposer's Marks is in the millions of dollars.

4. Opposer's Marks are inherently distinctive and/or have acquired distinctiveness through secondary meaning developed in the minds of consumers, and as such, are presumed to be identifiers of source to members of the public when used in commerce. Moreover, Opposer acquired a legitimate proprietary interest in the marks when use of the marks in conjunction with the sale of goods and services commenced. Consequently, Opposer has common law rights in Opposer's Marks as proprietary trademarks, which rights extend, without limitation, to the exclusive right to use such designations nationwide.

5. Furthermore, as a result of Opposer's licensees' extensive and continuous advertising, promotion, and use of Opposer's Marks, those designations have become famous and have acquired a special and particular significance and very valuable goodwill in identifying Opposer's licensees and their products and services. Members of the public automatically recognize Opposer's Marks and associate Opposer's Marks with Opposer's licensees and the quality embodied in products and services bearing Opposer's Marks. Consequently, through such usage and recognition, Opposer has acquired rights in Opposer's Marks as proprietary trademarks, which rights extend, without limitation, to the exclusive right to use such designations nationwide.

6. Applicant filed Application Serial No. 77/894,143 for the mark "LET'S GROW SOMETHING TOGETHER" in connection with the following goods in International Class 031: "Herb seeds for planting; organic gardening kit for indoor and outdoor planting composed primarily of organic seeds for fruits, vegetables and flowers and also including peat pots and peat pellets; plant seeds; seeds and bulbs; seeds for flowers; seeds for fruit and vegetables; seeds for horticultural purposes; tree growing kits composed primarily of seeds and also including peat pots and peat pellets." Application Serial No. 77/894,143 lists a first use date of June 17, 2009.

7. Registration to Applicant of the “LET’S GROW SOMETHING TOGETHER” mark herein opposed for the goods of International Class 031 identified in pending Application Serial No. 77/894,143 would provide Applicant with the *prima facie* exclusive right to use the “LET’S GROW SOMETHING TOGETHER” mark in commerce in connection with such goods, despite Opposer’s rights in Opposer’s Marks, as provided by common law and as represented in Application Serial Nos. 78/808,928; 77/291,533; and 77/058,776.

8. Applicant began using the “LET’S GROW SOMETHING TOGETHER” mark after the first use dates of Opposer’s Marks.

9. Applicant began using the “LET’S GROW SOMETHING TOGETHER” mark after Opposer’s Marks became famous.

10. Applicant’s “LET’S GROW SOMETHING TOGETHER” mark is confusingly similar to Opposer’s Marks such that the use and registration of the “LET’S GROW SOMETHING TOGETHER” mark for the goods of International Class 031 identified in pending application Serial No. 77/894,143 is likely to cause confusion among consumers and the public as to the source, sponsorship, or approval of Applicant’s goods in light of Opposer’s rights.

11. Applicant’s “LET’S GROW SOMETHING TOGETHER” mark is dilutive of Opposer’s Marks such that the use and registration of the “LET’S GROW SOMETHING TOGETHER” mark for the goods of International Class 031 identified in pending Application Serial No. 77/894,143 is likely to dilute the distinctive nature of Opposer’s famous Marks and diminish the capacity of Opposer’s famous Marks to identify Opposer, Opposer’s licensees and/or the goods and services associated therewith.

12. Applicant's "LET'S GROW SOMETHING TOGETHER" mark is sufficiently similar to Opposer's Marks so as to trigger consumers to conjure up Opposer's famous Marks when confronted with Applicant's mark.

13. Concurrent use of the "LET'S GROW SOMETHING TOGETHER" mark by the Applicant for the goods of International Class 031 identified in pending Application Serial No. 77/894,143, and of Opposer's Marks by Opposer's licensees, will result in irreparable damage to Opposer's or its licensees' reputation and goodwill as a result of the likelihood of confusion and/or dilution pled herein, all to the great detriment of Opposer.

14. By reason of the foregoing, Opposer respectfully submits that Applicant's application for registration of the "LET'S GROW SOMETHING TOGETHER" mark in International Class 031 should be refused, pursuant to 15 U.S.C. §§ 1052 et seq., and/or 1125(c), on the grounds that (1) Applicant's registration and use of the "LET'S GROW SOMETHING TOGETHER" mark on goods in International Class 031 is likely to cause dilution of Opposer's famous Marks ; and (2) Applicant's pending application consists of or comprises a mark which so resembles a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the Applicant in International Class 031 to cause confusion, or to cause mistake, or to deceive.

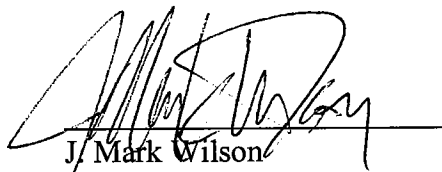
15. Accordingly, Opposer asserts, pursuant to 15 U.S.C. § 1063 et seq., that it will be damaged by the issuance of a registration to Applicant for the mark as sought in Trademark Application Serial No. 77/894,143.

WHEREFORE, Opposer, LF, LLC, prays that Trademark Application Serial No. 77/894,143 for registration of Applicant's "LET'S GROW SOMETHING TOGETHER" mark in International Class 031 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of LF, LLC.

Please charge any additional fees incurred by Opposer in conjunction with this proceeding to the firm's Deposit Account No. 50-2316.

Date: July 23, 2010

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Mark Wilson", written over a horizontal line.

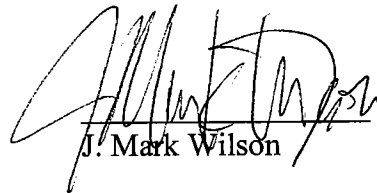
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Facsimile: (704) 331-1159
markwilson@mvalaw.com
katecole@mvalaw.com

Attorneys for Opposer

CERTIFICATE OF SERVICE

I certify that the foregoing *NOTICE OF OPPOSITION* was served on Applicant by mailing a copy of same by U.S. first class mail, postage prepaid, on the 23rd day of July, 2010, addressed as follows:

Willard Randolph Van Nostrand, III
3737 E. Calle Cortez
Tucson, Arizona 85716


J. Mark Wilson